

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**MISSISSIPPI STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE;
DR. ANDREA WESLEY; DR. JOSEPH
WESLEY; ROBERT EVANS; GARY
FREDERICKS; PAMELA HAMMER
BARBARA FINN; OTHO BARNES;
SHIRLINDA ROBERTSON; SANDRA
SMITH; DEBORAH HULITT; RODESTA
TUMBLIN; DR. KIA JONES; ANGELA
GRAYSON; MARCELEAN ARRINGTON;
VICTORIA ROBERTSON**

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:22-cv-734-DPJ-HSO-LHS

**STATE BOARD OF ELECTION
COMMISSIONERS; TATE REEVES, *in his
official capacity as Governor of Mississippi;*
LYNN FITCH, *in her official capacity as
Attorney General of Mississippi;* MICHAEL
WATSON, *in his official capacity as Secretary
of State of Mississippi***

DEFENDANTS

AND

**MISSISSIPPI REPUBLICAN
EXECUTIVE COMMITTEE**

INTERVENOR-DEFENDANT

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE

INTRODUCTION

Comes now Defendants State Board of Election Commissioners, Governor Tate Reeves, Attorney General Lynn Fitch, and Secretary of State Michael Watson (collectively, "Defendants") and file this, their Response in Opposition to Plaintiffs' Motion in Limine to Exclude Untimely Expert Testimony from Dr. Peter Morrison [Dkt. #170]. In support of this Response, the Defendants would show as follows:

1. Dr. Morrison's supplemental report is not untimely. First, it was filed within the Court's discovery period. Second, it was filed more than 30 days prior to trial. December 11 is approximately 77 days prior to trial and 37 days prior to the pretrial disclosure deadline. The Court's Case Management Order was silent as to expert reports and Defendants had 30 days prior to trial to supplement Dr. Morrison's report. *See* FED. R. CIV. P. 26(a)(3)(B).

2. Dr. Morrison's supplemental report did not introduce a new opinion. Instead, it provided the statistical tests he explained he would perform at the deposition related to a timely disclosed opinion. *See* [Dkt. # 170-2], p. 156-57. Rule 26(e) contemplates this sort of supplement. To the extent, if any, the Court determines that Dr. Morrison's supplemental report does offer any new opinions, the preclusion of expert testimony is an extreme sanction, especially in the absence of any prejudice or surprise to the opposing party.

3. Plaintiffs' Motion in Limine to exclude evidence is improper in a bench trial. Since this matter is set for a bench trial, the Court should find that this Motion in Limine is unnecessary, as the Court can and does readily exclude from its consideration inappropriate evidence of whatever variety.

WHEREFORE, PREMISES CONSIDERED, the Defendants respectfully request the Court deny Plaintiffs' motion to exclude Dr. Morrison's supplemental report.

THIS the 11th day of January, 2024.

Respectfully submitted,

STATE BOARD OF ELECTION
COMMISSIONERS; TATE REEVES, IN HIS
OFFICIAL CAPACITY AS GOVERNOR OF
MISSISSIPPI; LYNN FITCH, IN HER OFFICIAL
CAPACITY AS ATTORNEY GENERAL OF
MISSISSIPPI; MICHAEL WATSON, IN HIS
OFFICIAL CAPACITY AS SECRETARY OF
STATE, DEFENDANTS

By: /s/ P. Ryan Beckett
P. Ryan Beckett (MB #99524)
ONE OF THEIR COUNSEL

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CERTIFICATE OF SERVICE

I, P. Ryan Beckett, one of the attorneys for the Defendants, do hereby certify that I have this day filed the above and foregoing document with the Clerk of the Court using the ECF system which sent notification of such filing to all counsel of record.

This the 11th day of January, 2024.

/s/ P. Ryan Beckett

P. Ryan Beckett

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